

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
HOWARD LAMAR LANGFORD, JR.,)	
)	CASE NO. BK16-80078
Debtor(s).)	
HOWARD L. LANGFORD,)	A16-8019
)	
Plaintiff,)	8:16CV16
)	
vs.)	CHAPTER 7
)	
PHYSICIANS MUTUAL INSURANCE)	
COMPANY,)	
)	
Defendant.)	

REPORT & RECOMMENDATION

This matter is before the court upon referral by the United States District Court for the District of Nebraska (Fil. No. 1).

Mr. Langford filed a complaint with a jury demand in the United States District Court for the District of Nebraska on January 14, 2016, alleging racial discrimination and retaliation by his employer. The defendant has not yet been served with process. Five days later, Mr. Langford filed a Chapter 7 bankruptcy petition and disclosed the pending civil litigation in his list of assets.

Mr. Langford is pursuing his civil case pro se. In a request for an extension of time to effectuate proper service, he advised the district court of his bankruptcy case. In response to that suggestion of bankruptcy, the district court referred the case to the bankruptcy court. However, Local Rule NEGenR 1.5(a)(1) was amended in December 2014 to allow the district court to stay the litigation as against the party in bankruptcy until a party requests referral of the case to the bankruptcy court. Here, no party has requested such a referral. Further, the case involves issues of federal law not commonly dealt with by this court and the plaintiff has requested a jury trial on those issues, which is more appropriately held in district court. These reasons all favor the return of the case to the district court.

In addition, the debtor in bankruptcy is the plaintiff in this proceeding seeking damages against the defendant. As such, this proceeding is not an action against the debtor and is not subject to the automatic stay of 11 U.S.C. § 362(a). Normally, the Chapter 7 trustee would be the real party in interest in litigation by the bankruptcy estate, but the trustee in this case has filed a notice of his intent to abandon all of the assets of this bankruptcy estate, which would include this lawsuit. Therefore, the debtor has standing to prosecute this cause of action.

Accordingly, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this adversary proceeding to go forward with the litigation.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: April 21, 2016.

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino
Chief Judge

Notice given by the Court to:
Warren J. Ford, III
Francis X. Skrupa
Richard D. Myers
U.S. Trustee